



DEFENSE LOGISTICS AGENCY
DISTRIBUTION
430 MIFFLIN AVENUE
NEW CUMBERLAND, PENNSYLVANIA 17070

MEMORANDUM FOR DEPUTY COMMANDER, DLA DISTRIBUTION

SUBJECT: Investigation Findings and Conclusions

On 16 February 2017, you appointed me to conduct an investigation into the facts and circumstances surrounding the alleged harassment and unprofessional conduct against (b) (6) (b) (6) by (b) (6) and (b) (6). On 1 March 2017, my investigation was amended and included an expanded scope as to whether the subordinate employees are fearful of retaliation and/or fearful of (b) (6) and if (b) (6) disclosed information related to the investigation to individuals without a need to know basis.

The facts and circumstances surrounding the allegations, to include my findings, are further delineated below:

1. BACKGROUND:

- a. (b) (5)
[REDACTED]
- b. The notification submitted by (b) (6) included references to a harassment complaint filed against (b) (6) that was found to be valid. (b) (5)
[REDACTED]
- c. Interviews with witnesses were primarily conducted during face-to-face interviews 23 February and 28 February – 2 March 2017. Other than (b) (6), interviews were conducted while I was TDY to DLA Distribution (b) (6)
- d. While conducting the interviews, additional concerns were raised by the interviewees and submitted by me to GC via email and phone. This resulted in an amendment to my appointment letter and two additional items added to the scope of my investigation.

2. RECOMMENDATIONS: Not Applicable.

3. FINDINGS:

- a. I find that a closed-door meeting between (b) (6) did occur. I also find (b) (6) told (b) (6) the harassment complaint was valid and the discussion included possible removal from his current position (at minimum) to

removal from civil service (at maximum). I find that the discussion also included that (b) (6) is the (b) (6) and (b) (6) for the valid harassment complaint; therefore, the disciplinary action would be recommended by (b) (6) and if in agreement, approved by (b) (6).

Although (b) (6) denies this meeting occurred between (b) (6) and (b) (6), the statements provided by (b) (6) and (b) (6) appear to be more credible and probable. These statements provide a greater weight of evidence than supports to a contrary conclusion as to the IO's conclusion that a meeting between the two took place. As a result, this portion of the allegation is substantiated.

Whether (b) (6) stated "your days at DLA are over" or not, could not be substantiated, nor a determination of which statement is more credible or probable. As a result, this portion of the allegation is not substantiated.

Reference Enclosure 3 – Pages 4-6 of 16, paragraphs x-xx; Enclosure 10 - page 3 of 6, paragraphs l-q; and Enclosure 12 – page 4 of 10, paragraph ii.

- b. I did not find if (b) (6) told (b) (6) about the conversation with (b) (6). I find that (b) (6) did ask (b) (6) if they were really going to fire (b) (6). I find that (b) (6) became aware of these allegations as a result of a conversation with (b) (6). Although (b) (6) denies making this statement to (b) (6), I find the statements provided by (b) (6) to be more credible and probable. These statements provide a greater weight of evidence than supports to a contrary conclusion. As a result, this allegation is partially substantiated.

Reference Enclosure 10 – page 4 of 6, paragraph ee., Enclosure 12 - page 4 of 10, paragraph ee – ii; Enclosure 19 – page 2 of 4, paragraphs i, m, and n; and Enclosure 20 – page 2 of 2, paragraph g.

- c. I find that (b) (6) did have a discussion with (b) (6) that included the statement or one similar to it ("(b) (6) has no way of knowing what I would recommend, but you know (b) (6)"). (b) (6) acknowledged that the statement was actually "how the hell would (b) (6) know what I would recommend" and then went on to say "you know (b) (6)".

I find the first part of the statement was referring to the fact that (b) (6) is the (b) (6) and (b) (6) is the (b) (6). Further, I find that (b) (6) has not yet seen or approved the recommended disciplinary action; therefore, he is unaware what (b) (6) recommended. As for the second portion of the statement ("you know (b) (6)"), I find this was referring to (b) (6) general demeanor/nature, as investigated under paragraph i below. As a result, this allegation is substantiated, but with justification/cause.

Reference Enclosure 3 – page 5 of 16, paragraph ff; page 8 of 16, paragraph aaa;
Enclosure 10 – page 2 of 6, paragraphs h and i and page 6 of 6, paragraph uu;
Enclosure 12 – page 3 of 10, paragraphs x-bb and page 4 of 10, paragraphs mm and nn; and Enclosure 13 page 1 of 3, paragraphs c and d.

- d. I find that (b) (6) did detail (b) (6) into the position of the Accountable Property Officer (APO), informally, with no SF50/52 actions. I find that this occurred as a result of the substantiated sexual harassment complaint, pending final disciplinary action, and at the guidance of GC and HR. Further, I find that the informal detail occurred to accommodate the immediate removal from a supervisory role (given the validation of the complaint) and the difference in GS scale of the positions. The Division Chief position is a supervisory GS-13 and the Accountable Property Officer (APO) a non-supervisory GS-11. The lack of a formal detail allowed (b) (6) to maintain his GS/pay until the final/formal disciplinary action was recommended and approved. I find that (b) (6) is still performing the APO duties. I find that (b) (6) was formally detailed into (b) (6) position for 120 days, but that there is no one currently detailed to the Division Chief position. As a result, this allegation is substantiated, but with justification/cause.

Reference Enclosure 3 – page 9 of 16 paragraphs hhh - Enclosure 5 – page 2 of 4, paragraphs o, p, and q; Enclosure 10 – page 4 of 6, paragraphs y – bb; and Enclosure 12 - page 5 of 10, paragraphs tt, yy, zz and bbb.

- e. I do not find that a conversation between (b) (6) and the investigator, (b) (6), occurred with (b) (6) stating that the allegations (regarding the harassment complaint) were more than a misunderstanding and that to his knowledge there was no (harassment) complaint. I find that multiple conversations occurred during the times (b) (6) was at DDHU conducting his investigation and when he returned to DDHU several months later for another purpose. There were multiple formal and informal investigations going on at or near the same time as the one (b) (6) was investigating. (b) (6) stated he had to repeatedly clarify to (b) (6) which/what (b) (6) was investigating and (b) (6) acknowledged discussing multiple situations with (b) (6) in various conversations. As a result, this allegation is not substantiated.

Reference Enclosure 3 – page 3 of 16, paragraphs o and r and page 4 of 16, paragraphs t and v; and Enclosure 15 – page 3 of 4, paragraph n.

- f. I find that (b) (6) did instruct all supervisors that no one was to discuss anything to do with (b) (6) assignment and placement. I find that (b) (6) reassignment from Division Chief to APO resulted in a physical relocation from (b) (6). I find that (b) (6) physical placement into that building caused awareness to the situation and (b) (6) instructions were to help alleviate rumors. Further, the instructions asked that everyone be respectful and treat the situation and (b) (6) with dignity.

(b) (6) concurred that the instructions occurred a couple of times because there were rumors and discussions. Additionally, (b) (6) concurred that (b) (6) response to (b) (6) stating it was inappropriate to discuss the matter was an appropriate response. Further, (b) (6) was able to discuss the situation with those he wanted to and those discussions became the source of information. I cannot find that (b) (6) instructions heightened awareness and scrutiny of the matter by other employees. As a result, this allegations partially substantiated, but with justification/cause.

Reference Enclosure 3 – page 7 of 16, paragraph tt; Enclosure 12 - page 5 of 10, paragraphs ccc and ddd, Enclosure 16 – page 2 of 5, paragraph m and page 3 of 5 paragraph n; and Enclosure 19 – page 2 of 4, paragraphs l.

As part of (b) (6) temporary placement:

- (1). I find that (b) (6) was removed from all managerial and supervisory responsibilities, as he is executing duties as an APO, not the Division Chief at (b) (6). As stated earlier, the APO position is non-supervisory and the previous APO confirmed that when he was in the position was non-supervisory. As a result, this allegation is substantiated, but with justification/cause.

Reference Enclosure 10 – page 5 of 6, paragraph jj; Enclosure 12 - page 6 of 10, paragraphs iii, and Enclosure 19 – page 3 of 4, paragraphs q.

- (2). I find that (b) (6) was disinvited to all supervisory and/or managerial related meetings (including monthly management and weekly production). As stated in paragraph (1) above, (b) (6) executing duties as an APO, which is non-supervisory; therefore, there would be no need to participate in supervisory/management level activities. The previous APO confirmed that when he was in the position that he did not attend supervisory/management level meetings/activities. As a result, this allegation is substantiated, but with justification/cause.

Reference Enclosure 10 – page 5 of 6, paragraph kk; Enclosure 12 - page 6 of 10, paragraphs jjj, and Enclosure 19 – page 3 of 4, paragraphs q.

- (3). I find there is restriction from communication with (b) (6) (b) (6), but as the APO and while (b) (6) is executing those duties, there would be no need for his communication with those customers. The previous APO confirmed that when he was in the position he did not have communication with those customers. As a result, this allegation is substantiated, but with justification/cause.

Reference Enclosure 10 – page 5 of 6, paragraph ll; Enclosure 12 - page 6 of 10, paragraphs kkk, and Enclosure 19 – page 3 of 4, paragraphs q.

- (4). I find that (b) (6) was placed into the GS-11 APO position to execute those duties with no formal detail or other paperwork. I find that this occurred at the recommendation of GC and HR and because if a formal detail occurred, (b) (6) would not retain his current GS 13 position and associated pay. The previous APO confirmed the position was a GS-11 when he was in it and management confirmed there were no other vacant/open positions. As a result, this allegation is substantiated, but with justification/cause.

Reference Enclosure 10 – page 4 of 6, paragraph y and bb; Enclosure 12 – page 5 of 10, paragraph bbb and page 6 of 10, paragraphs kkk; Enclosure 16 – page 2 of 5, paragraph g; and Enclosure 19 – page 3 of 4, paragraphs q.

- (5). I could not find that (b) (6) asked (b) (6) about why he would participate in things like a MWR burger bun. As a result, this allegation is not substantiated.

Reference Enclosure 5 – page 3 of 4, paragraph w.

- g. Although most items in a through f above were partially or fully substantiated, there was valid justification or cause for the actions. Further, the actions do not meet the definition of harassment. Direct contact between (b) (6) and (b) (6) is extremely minimal; approximately once a month (b) (6) brings a letter to (b) (6) regarding Accountable Property for review, approval and signature. Additionally, I asked five (5) employees if they have witnessed any harassment by (b) (6) to (b) (6) and all five (5) did not or could not report any harassment. I do not find that (b) (6) engaged in harassment against (b) (6) therefore, this allegation is not substantiated.

Reference Enclosure 3 – page 14 of 16, paragraph rrr; Enclosure 5 – page 3 of 4, paragraph aa; Enclosure 7 – page 4 of 6, paragraph s; Enclosure 9 – page 2 of 3, paragraph q; Enclosure 10 – page 4 of 6, paragraph x; Enclosure 16 – page 4 of 5 paragraph bb; and Enclosure 19 - page 3 of 4, paragraph s.

Although most items in a through f above were partially or fully substantiated, there was valid justification or cause for the actions. Further, the actions do not meet the definition of harassment. I asked five (5) employees if they have witnessed any harassment by (b) (6) to (b) (6) and all five (5) did not or could not report any harassment. Further, (b) (6) example identifying a specific incident identifying harassing behavior with (b) (6) did not substantiate or meet intimidation, hostility or other insulting behavior. I do not find that (b) (6) engaged in harassment against (b) (6); therefore, this allegation is not substantiated.

Reference Enclosure 3 – page 14 of 16, paragraphs qqqq; Enclosure 5 – page 3 of 4, paragraph a; Enclosure 7 – page 4 of 6, paragraph r; Enclosure 9 – page 2 of 3,

paragraph p; Enclosure 16 – page 4 of 5 paragraph y; and Enclosure 19 - page 3 of 4, paragraph r.

- h. Although most items in a through f above were partially or fully substantiated, there was valid justification or cause for most, but not all, the actions. I find (b) (6) engaged in unprofessional conduct related only to item b. (see page 2, ROI). (b) (6) did divulge information to (b) (6) related to (b) (6) situation where (b) (6) did not have a need to know. This substantiation is further addressed in paragraph j below. I asked five (5) employees if they have witnessed any unprofessional behavior by (b) (6) to (b) (6) and all five (5) did not or could not report any such behavior. As a result, this allegation is substantiated.

Reference Enclosure 5 – page 3 of 4, paragraph aa; Enclosure 7 – page 4 of 6, paragraph s; Enclosure 9 – page 2 of 3, paragraph q; Enclosure 16 – page 4 of 5 paragraph bb; and Enclosure 19 - page 3 of 4, paragraph s.

Although most items in a through f above were partially or fully substantiated, there was valid justification or cause for the actions. Further, the actions do not meet the definition of unprofessional conduct. When considering all the evidence, factors, and witnesses' information, I find that (b) (6) has maintained a professional approach to the entire situation. I asked (b) (6) why he included (b) (6) in the complaint and his reasoning was (b) (6) has always acted this way but (b) (6) is unable to stop (b) (6) unlike the previous deputy who was able to stop (b) (6). I asked five (5) employees if they have witnessed any unprofessional behavior by (b) (6) to (b) (6) and all five (5) did not or could not report any such behavior. I do not find that (b) (6) engaged in unprofessional conduct; therefore, this allegation is not substantiated.

Reference Enclosure 3 – page 14 of 16, paragraphs xxxx; Enclosure 5 – page 3 of 4, paragraph a; Enclosure 7 – page 4 of 6, paragraph r; Enclosure 9 – page 2 of 3, paragraph p; Enclosure 16 – page 4 of 5 paragraph y; and Enclosure 19 - page 3 of 4, paragraph r.

- i. I find that under (b) (6) leadership, the culture at DDHU has resulted in subordinate employees being fearful of retaliation and being fearful of (b) (6). Eight (8) employees were asked if they were afraid of (b) (6) and seven (7) stated yes and one (1) stated he thinks certain employees are. Eight (8) employees were asked if they were afraid of retaliation by (b) (6) and seven (7) stated yes/absolutely and one (1) stated to a degree they are.

One (1) employee admitted to watching for the retaliation for (b) (6) and because he was never the focus of it and was part of management for the majority of the time, he never raised the issue to a higher level.

Regarding the retaliation allegations, most convey the retaliation has not/will not be obvious or overt, but rather subvertly or indirectly, making it difficult to prove/validate. Multiple witnesses further stated that if you do something (b) (6) (b) (6) does not like that you become “a target”.

Reference Enclosure 4, Enclosure 6, Enclosure 8, Enclosure 13, Enclosure 14, Enclosure 17, Enclosure 18, and Enclosure 21.

Several specific examples given by the employees were related to previous employees that have since retired or left. Other examples included changes in series (even after being given permission to remain in the current series), differences in bonuses (when work product quality and/or timeliness has not changed) due to a filed grievance, humiliation by talking loud enough for people to hear, including the original person; constant push back or disapproval of requests (i.e. travel comp); and blame on the employees when (b) (6) made the decision.

Reference Enclosure 6 - Page 2 of 3, paragraph j and page 3 of 3 paragraph s; Enclosure 18 – Page 2 or 4, paragraph j; Enclosure 21 – Page 2 and 3 of 4, paragraph k and page 3 of 4, paragraph k

The above examples have not been collaborated. When I asked (b) (6) about some of the examples, he denied doing those actions and denied he retaliates. Given the fear expressed by the employees during the interviews, I sent an email to all of them emphasizing that harassment and retaliation will not be tolerated and is taken seriously. I attached DLAI 1438.06 and provided several contacts to notify if they believe that harassment or retaliation is occurring, either directly towards you or you are a witness of it. Reference Enclosure 22.

While interviewing employees regarding the above allegations, they reported examples of inappropriate comments made by (b) (6). Some of the comments were sexual in nature, while others were about appearance, hygiene, or other personal attributes (age, weight). Seven (7) employees were asked about the inappropriate comments. Six (6) stated “yes” they have heard (b) (6) make inappropriate comments about others; one (1) stated he has heard him make jokes in front of people, but cannot recall specifics because he zones out when (b) (6) starts; one (1) stated (b) (6) not sure; and the seventh employee provided examples without being asked specifically. The inappropriate jokes and comments appear to relate to or be part of the culture/environment.

Reference Enclosure 4, Enclosure 6, Enclosure 8, Enclosure 14, Enclosure 17, Enclosure 18, and Enclosure 21.

Some specific examples included: 1) regularly referring to (b) (6) as ‘old man’ in such a manner that (b) (6) and others believe (b) (6) is trying to force (b) (6) to retire; 2) (b) (6) making a sexual comment regarding the way a (b) (6) ate a banana; and 3) that due to a new machine in a warehouse

creating a smaller aisle width (which still left the aisles with plenty of space) (b) (6) did not know how (b) (6) would fit down the aisle due to her weight/size.

Reference Enclosure 3 – page 2 of 5, paragraph g; Enclosure 8 – page 2 and 3 of 5, paragraph k and n; and Enclosure 21 – page 3 of 4, paragraphs l and m.

I received two (2) emails from employees in response to my email reporting alleged statements by (b) (6), in regards to the investigation, where they believe he will retaliate. Reference Enclosures 23 and 24.

By considering all of the evidence, including the witnesses' demeanor, opportunity for knowledge, information possessed, and their ability to recall and relate events, this allegation is substantiated.

- j. I find that (b) (6) inappropriately disclosed information related to (b) (6) and investigation, to include divulging information to individuals without a need to know basis. As discussed in paragraph b above, I find that (b) (6) became aware of these allegations as a result of a conversation with (b) (6). Although (b) (6) denies making this statement to (b) (6), I find the statements provided by (b) (6) to be more credible and probable. These statements provide a greater weight of evidence than supports to a contrary conclusion. As a result, this allegation is substantiated.

Reference Enclosure 10 – page 4 of 6, paragraph ee.; Enclosure 12 - page 4 of 10, paragraph ee - ii, and Enclosure 19 – page 2 of 4, paragraphs i, m, and n.

4. OBSERVATION:

The length of time between the harassment complaint against (b) (6) being found valid and any resulting disciplinary action appears to have contributed to this situation/complaint. Although there are a number of contributing factors that led to the delay, it is my understanding that the disciplinary action is still currently on hold and pending resolution of this complaint.

(b) (6)

MICHELLE L. PHELPS
Investigating Officer

24 Enclosures:

1. Appointment Letter, dated 16 Feb 2017
2. Amendment to Appointment Letter, dated 1 Mar 2017
3. Sworn Statement by (b) (6), 28 Feb 2017
4. Sworn Statement by (b) (6), 2 Mar 2017

- (b) (6)
5. Sworn Statement by
 6. Sworn Statement by
 7. Sworn Statement by
 8. Sworn Statement by
 9. Sworn Statement by
 10. Sworn Statement by
 11. Sworn Statement by
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 15. Sworn Statement by
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 17. Sworn Statement by
 18. Sworn Statement by
 19. Sworn Statement by
 20. Sworn Statement by
 21. Sworn Statement by
 22. Exhibit A – Email sent by Ms. Michelle Phelps to interviewees regarding Retaliation Policy & Contacts
 23. Exhibit B – Email received from (b) (6)
 24. Exhibit C – Email received from (b) (6)